Supreme Court, U. S.
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No. 77-1707

In the Supreme Court of the United States

OCTOBER TERM, 1978

ROBERT STARR, ET AL., PETITIONERS

v.

RICHARD NIXON, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioners brought suit in the United States District Court for the District of Colorado, seeking a declaratory judgment that the pardon of former President Nixon by President Ford violated Article II, Section 2 of the Constitution.[1] The district court dismissed the complaint for lack of jurisdiction and for lack of standing of petitioners (Pet. App. A). Petitioners filed a timely notice of appeal to the United States Court of Appeals for the Tenth Circuit, and that court docketed the appeal on May 22, 1978. This petition was filed on May 30, 1978, seeking a writ of certiorari in advance of judgment.

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[1]"The President * * * shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment."

This case is not of "such imperative public importance as to justify the deviation from normal appellate processes and to require immediate settlement" in this Court, and thus certiorari before judgment is not warranted under Rule 20 of this Court's rules. See *United States* v. *Nixon*, 418 U.S. 683, 686-687; *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579; *United States* v. *United Mine Workers of America*, 330 U.S. 258; *Carter* v. *Carter Coal Co.*, 298 U.S. 238.

Moreover, petitioners' claims are insubstantial. Petitioners, who identify themselves as voters, taxpayers, and independent businessmen (Pet. 5-6), lack standing to sue because they have alleged no personal injury, let alone an injury distinct from that of any other citizen. *United States* v. *Richardson*, 418 U.S. 166; *Schlesinger* v. *Reservists Committee to Stop the War*, 418 U.S. 208; *Linda R.S.* v. *Richard D.*, 410 U.S. 614. Moreover, the President's power to issue pardons is textually committed to his judgment alone, and judicial supervision of the exercise of that power would be inappropriate. *Schick* v. *Reed*, 419 U.S. 256.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

JULY 1978.

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